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Attorney for Petitioner Kevin Dugan

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,) Case No.: CR 03-20010 RMW
Plaintiff-Appellee,)
vs.) DEFENDANT'S
KEVIN DUGAN,) (1) EX PARTE MOTION AND [PROPOSED]
Defendant-Appellant.) ORDER FOR LIMITED ACCESS TO
) SEALED PORTIONS OF TRANSCRIPTS
) FOR PURPOSES OF APPEAL
)
) (2) DECLARATION OF MARK D. EIBERT
) IN SUPPORT THEREOF; AND
)
) (3) [] ORDER

I, Mark D. Eibert, declare as follows:

1. I am an attorney at law licensed to practice before this Court, and I am the appointed attorney of record for Defendant Kevin Dugan in the Ninth Circuit appeal of this case (Appeal No. 08-10579). If called as a witness, I could and would competently testify to the facts contained in this pleading.

2. Two short portions of transcripts that have been produced for purposes of appeal are under seal: page 38 of the 10-30-07 transcript, and pages 4-9 of the 3-3-08 transcript. In both cases, the government attorney(s) was/were excused from the courtroom prior to the hearings that were transcribed in the sealed portions of transcript. Based on the surrounding unsealed portions of the transcript, the 6 sealed pages from the 3-3-08 transcript are obviously related to representation issues; the one sealed page from the 10-30-07 transcript also appears to be representation-related, but the precise subject is not as clear from the surrounding text.

DEFENDANT'S EX PARTE MOTION FOR ACCESS TO SEALED TRANSCRIPTS,
United States v. Dugan, CR 03-20010 RMW

3. Undersigned counsel believes that these 7 sealed pages may contain privileged information about Mr. Dugan's attorney-client relationships at the trial court level. Mr. Dugan himself believes that they may be relevant to his appeal, and has specifically requested that I review them. I need to review them myself to determine whether the information contained therein includes information that is relevant to the appeal or is subject to the attorney-client privilege. Once I have reviewed them and discussed them with Mr. Dugan, I can determine whether they may be relevant and/or privileged and/or whether a request should be made to unseal them for the government as well.

4. The current due date of the Appellant's Opening Brief in this case is January 22, although a motion for a 28 day extension of time to file that brief is now pending.

5. For the foregoing reasons, undersigned counsel respectfully requests that the two short portions of sealed transcript described above be unsealed for the limited purpose of review by undersigned appellate counsel for Mr. Dugan, and Mr. Dugan. A proposed Order is below.

A copy of this ex parte Order is being served on government trial counsel by PACER, and on government appellate counsel by U.S. Mail.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed at Half Moon Bay, California on January 19, 2010.

Respectfully submitted,

/s/ Mark D. Eibert

MARK D. EIBERT
Attorney for Defendant Kevin Dugan

ORDER

Good cause appearing therefore, it is hereby ORDERED as follows:

1. That page 38 of the 10-30-07 transcript in this case, and pages 4-9 of the 3-3-08 transcript in this case, be unsealed for the limited purpose of allowing the court reporter to provide them to Mark Eibert, appellate counsel of record for Defendant Kevin Dugan, and to Mr. Dugan. They shall not be provided to any other person without further order of this Court.

1 2. The use of the sealed portions of such transcripts shall be limited to the appeal of this
2 case only. Unless otherwise ordered by this Court or the Ninth Circuit, should any such sealed
3 portions of transcript be filed with the Ninth Circuit as part of the appeal, both the transcript
4 itself and any brief or other document containing quotes, references or discussions of the sealed
5 materials shall also be filed under seal to the extent permitted by the Ninth Circuit under Ninth
6 Circuit rules.

7 IT IS SO ORDERED.

8 Date: 2/9/10



9 HON. RONALD WHYTE
10 United States District Judge

PROOF OF SERVICE

The undersigned hereby certifies that his business address is Post Office Box 1126, Half Moon Bay, CA 94019-1126, that he is not a party to this action, and that he is a citizen of the United States and a person of such age and discretion to be competent to serve papers. The undersigned further certifies that on this date he caused a copy of:

DEFENDANT'S EX PARTE MOTION AND [PROPOSED] ORDER FOR LIMITED ACCESS
TO SEALED PORTIONS OF TRANSCRIPTS FOR PURPOSES OF APPEAL

Re: United States v. Kevin Dugan, CR 03-20010 RMW

To be served by placing it in the mail at Half Moon Bay, California in a post-paid envelope sealed and addressed to:

Ms. Merry Jean Chan
Assistant U. S. Attorney
450 Golden Gate Avenue, Box 36055
San Francisco, CA 94102

Attorney for the Government

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 19, 2010 at Half Moon Bay, California.

/s/ Mark D. Eibert

MARK D. EIBERT

DEFENDANT'S EX PARTE MOTION FOR ACCESS TO SEALED TRANSCRIPTS,
United States v. Dugan, CR 03-20010 RMW